IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 08.02.2007

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE R.SUDHAKAR

W.A.NOS. 2849 TO 2863 OF 2002
AND
W.M.P.NOS. 4805 TO 4819 OF 2002

1. K. Loganathan ...Appellant in WA.2849/02
rep. by his Power of
Attonery Agent R.Devadas

2. Mangali ...Appellant in WA.2850/02

3. Saroja ...Appellant in WA.2851/02

4. Sakunthala ...Appellant in WA.2852/02

5. V. Subramani ...Appellant in WA.2853/02

6. Pattu ...Appellant in WA.2854/02

7. Abdul Razool ...Appellant in WA.2855/02

8. Subbammal ...Appellant in WA.2856/02

9. Nilavazhagan ...Appellant in WA.2857/02

10. Thiruvengadam ...Appellant in WA.2858/02

11. A. Ganesan ...Appellant in WA.2859/02

12. Rajammal ...Appellant in WA.2860/02

13. Ekambaram ...Appellant in WA.2861/02

14. Masilamani ...Appellant in WA.2862/02

15. Mahalakshmi ...Appellant in WA.2863/02

- Vs -

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

1. The Government of Tamil Nadu
rep. by the Secretary to Government
Highways Department
Fort St. George, Chennai 600 009.

2. The Chairman
Madras Port Trust
Chennai 600 001.

3. The District Collector
Thiruvallur District at
Thiruvallur.

4. The Special Tahsildar
(Land Acquisition)
Miscellaneous Schemes
Saidapet, Chennai - 15. .. Respondents
in all the petitions

Writ Appeals filed against the order passed by the learned single Judge in W.P. Nos.15554 to 15568 of 2002 dated 11.6.02 as stated therein.

Prayers:- Appeals under clause 15 of the letters patent against the order of the Hon'ble the Mr. Justice F.M.Ibrahim Kalifulla, dated 11.6.2002 made in the exercise of the Special Original Jurisdiction of the High Court in the Writ Petitions Nos.15554 to 15568 of 2002 presented under Article 226 of the constitution of India to issue a writ of certiorari calling for the connected records of the 1st respondent culminating with the impugned declaration u/s 6 (1) of the Land Acquisition Act in G.O.Ms.No.238 Highways (HF2) dated 10.12.2001 and published the same in Notification No.11 (2) HW 925/c/2001 to acqure the petitioner's land in S.No.770; 753/1A, 717/2; 746/2, 745/1, 745/2 & 746/1; 772/1, 771; 749/3A, 744/2, 772/2, 773/1 & 773/2; 767 & 768/1; 758/5 and 760; 759/4, 769/1, 769/2 and 769/3; 744/1 respectively of Vallur village, Ponneri Taluk, Tiruvallur District measuring to an extent of

0.18.0 Ares 0.14.5 Ares;
0.37.0 Ares 0.14.5 Ares
0.25.0 Ares 0.40.5 Ares & 0.19.0 Ares
0.52.0 Ares 1.55.5 Ares
0.16.5 Ares 0.41.0 Ares
0.38.2 Ares 0.35.5 Ares & 0.14.0 Ares
0.06.5 Ares & 0.56.5 Ares
0.17.0 & 0.18.0 Ares
0.16.5 Ares 0.36.0 Ares 0.16.5 Ares & 0.52.5 Ares and 0.16.2 Ares respectively and quash the same so far at the petitioner in concerned.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

For Appellants : Mrs. Sujatha Rangaraj, for
M/s. T.Thankaswamy

For Respondents : Mr. G.Sankaran, AGP (W)

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR, J.)

Notification under Section 4(1) of the Land Acquisition Act was issued on 14.2.96. Section 6 Declaration was passed on 11.4.97. By a common order dated 19.12.00 in W.P.No.5784 of 1997 the Section 6 Declaration was quashed keeping the Notification issued under Section 4(1) of the Land Acquisition Act (hereinafter referred to as "the Act") intact. Authorities were permitted to proceed further in the matter as per law. Notice in Form 3-A was issued on 30.7.00 and objections were filed on 25.8.01. The remarks of the requisitioning authority overruling the objections were passed on 23.10.01 and, consequently, notice under Section 3-B was sent to the individuals to attend the Section 5-A enquiry on 24.10.01. On 8.11.01 objections were filed by the individuals and the same were overruled in the Section 5-A enquiry proceedings on 12.11.01. Thereafter, the second Section 6 Declaration was passed on 10.12.01, which were challenged in fifteen writ petitions on 5th April, 2002. By a common order dated 11th June, 2002, learned single Judge dismissed all the writ petitions by passing the following common order :-

> "5. Having regard to the position that the said objection was the subject matter of consideration in the earlier order of this court dated 19.12.2000 in the batch of writ petitions, wherein it has been specifically held that the notification under Section 4 (1) was kept intact while the only ground on which the award as well as Section 6 Declaration came to be set aside, was for the compliance of the procedure while holding the enquiry under Section 5-A and with reference to the said defect pointed out in the said order, when the present 5-A enquiry proceedings were held by strictly adhering to the procedure prescribed under law and no specific plea was raised either before the authority concerned, while holding the 5-A enquiry or in this writ petition with particular reference to any defect in the matter of holding of the said enquiry, there is no scope for entertaining these writ petitions.
>
> 6. Apart from the above, no other substantial ground was raised in these writ petitions, in order to

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

interfere with the proceedings impugned in these writ petitions. I therefore do not find any merit in these writ petitions. The writ petitions therefore fail and the same are dismissed. No costs. Consequently, WPMP Nos.20813 to 20841 are dismissed."

The present writ appeals have been filed challenging the common order dated 11.6.02 passed by the learned single Judge.

2. The only contention now raised by the counsel for the appellants in these appeals is that a specific ground was taken in the writ petitions that the Section 4(1) Notification dated 14.2.96 was in respect of the acquisition for the purpose of establishing staff quarters for the Madras Port Trust. However, in the second Section 6 Declaration dated 10.12.01, the purpose has been changed to provide for staff quarters for Ennore Port Trust. According to the petitioners, Ennore Port Trust is a company incorporated on 11.10.99 and, therefore, the acquisition proceedings should have been on the basis of the provisions of Chapter VII of the Act, and, consequently, Section 6 Declaration and the Notification under Section 4(1) which are at variance has to be set aside on the ground that acquisition proceedings is contrary to the procedure prescribed under the Land Acquisition Act relating to acquisition of land for companies. It is contended that the learned single Judge has not adverted to this issue in spite of a specific plea and dismissed the writ petitions only for the reasons stated above.

3. Mr. G.Sankaran, learned Additional Government Pleader appearing for the respondents drew our attention to Sections 3(cc), 3(e), 3(f)(iv) and(v), 4(1) and Explanation-2 to Section 6 of the Land Acquisition Act. Section 3(cc) of the Act reads as follows :-

"3(cc) the expression "corporation owned or controlled by the State" means any body corporate established by or under a Central, Provincial or State Act, and includes a Government company as defined in Section 617 of the Companies Act, 1956 (I of 1956), a society registered under the Societies Registration Act, 1860 (XXI of 1860) or under any corresponding law for the time being in force in a State, being a society established or administered by Government and a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, being a co-operative society in which not less then fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

4. Section 3 (e) of the Land Acquisition Act reads as follows :-

> "3(e) the expression "company" means --
> (i) a company as defined in Section 3 of the Companies Act, 1956 (I of 1956), other than a Government company referred to in clause (cc);
>
> (ii) a society registered under the Societies Registration Act, 1860 (XXI of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause(cc);
>
> (iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc)."

5. Section 3(f)(iv) and (v) of the Land Acquisition Act reads as follows:-

> "(f) the expression "public purpose", includes.
> (i) xxxx
> (ii) xxxx
> (iii) xxxx
> (iv) the provision of land for a corporation owned or controlled by the State;
>
> (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State;"

6. Explanation 2 to Section 6 of the Land Acquisition Act reads as follows :-

> "Explanation 2 - Where the compensation to be awarded for such property is to be paid out of the funds of a corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues."

7. Learned Additional Government Pleader submits that the acquisition is for a public purpose and M/s.Ennore Port Trust is a Company owned or controlled by the State and a Government company as defined in Section 617 of the Companies Act, 1956 vide Section 3(cc) of the Act. He also brought to the attention of the Court the common counter-affidavit dated 25.1.2007 and referred to paragraphs 2, 4, 5, 6 and 7 which is relevant and extracted below:-

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

"2. I submit that Ennore Port Limited was incorporated as a company on 11.10.1999 and commenced its commercial business on 8.3.2002."

"4. I submit that all Major Ports are run by the Trust in the country and the Government of India came with an idea to handle coal for Ennore Port Management through a company in the ratio of 66% : 33% (66% by Government of India holding and 33% by the Chennai Port Trust). The Chairman of the Trust and the Chairman of the company are appointed by the Government of India who heads the Institution and the entire profits of the Company goes to the Government of India."

"5. I submit that the Government of India by its communication dated 20.4.01 to the Chennai Port Trust states that out of the total investment of Chennai Port Trust in Ennore Port Limited Rs.100 Crores may be converted into equity as on 1.4.2000 and the balance amount minus cost of land may be treated as loan by the Chennai Port Trust to the Ennore Port Limited. So also the communication dated 18.7.02 by the Government of India confirm that the total investment made by the Government of India, Ministry of Shipping (Port Wings), states that out of the investment, Rs.200 Crores be converted into equity and the balance was treated as loan by Government of India to Ennore port Limited."

"6. I submit that the land in question was acquired for the purpose of constructing staff quarters in 1996 and the said land is still not transferred to Ennore Port Limited. Even in the communication by the Government of India dated 20.4.01 and 18.7.02 the investment both by Government of India and Chennai Port Trust to Ennore Port Limited was only for the business and the same was excluding the cost of the land which was acquired by the Government. The land is not being transferred and the purpose is not changed. It is still for the public purpose for constructing staff quarters of employees. The said lands are still not transferred to either Chennai Port Trust or Ennore Port Limited.

"7. I submit that prior to October, 1999 the construction of Ennore Port was done by Chennai Port Trust and therefore, Ennore Port was a part and parcel of Chennai Port Trust."

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

The learned counsel also brought to our attention the memorandum of Association of Ennore Port Limited dated 7th October, 1999. The Memorandum of Association has been signed by several Officers of Government of India, Officer of the Ministry of Surface Transport and by the Chairman, Board of Trustees, Chennai Port Trust. That Ennore Port Trust is partly owned by the Government of India and the Chennai Port Trust in the ratio of 66% and 33% respectively. In such view of the matter, it is contended that Section 3(cc) is attracted to the acquisition which is for public purpose and provided by the funds of the State. The acquisition is for the State and not for a private company.

8. We have heard the learned counsel appearing for the appellants on the above stated contention and the submission made by the Additional Government Pleader for the respondents. The factual position as presented before this Court makes it clear that during the pendency of the proceedings under the Land Acquisition Act, Ennore Port Trust came to be established as a company under the provisions of the Companies Act, 1956. The Memorandum of Association was subscribed by the Government of India, Chennai Port Trust and other officers of the Government of India, New Delhi in their official capacity. The Section 4(1) refers to the public purpose in land acquisition proceedings. Public purpose as defined under Section 3(f)(iv) includes, "the provision of land for a corporation owned or controlled by the State". The expression "Corporation owned or controlled by the State" includes a Government company as defined under Section 617 of the Companies Act, 1956 vide Section 3(cc) of the Act. Section 3(f)(v) defines the public purpose for the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State. Explanation (2) to Section 6 as extracted above speaks about the payment of compensation in respect of acquisition for a company as defined under Section 3(cc) and paid out of public revenues. A conjoint reading of the above said provisions makes it clear that the acquisition in question is for a public purpose and in furtherance of the objects of the Government owned company as defined under Section 3(cc). Further, the shares of the company, the Ennore Port Trust has been subscribed by the Government and the Chennai Port Trust only. Therefore, there cannot be any further dispute with regard to the status of Ennore Port Trust. From the facts culled out from the pleadings of the respondents, it is clear that since October, 1999, though Ennore Port was made a 'company' under the Companies Act, 1956, with the name and style 'Ennore Port Limited', but for the purpose of the Land Acquisition Act, 1894, it is a 'Corporation' owned and controlled by the Government of India as defined under Section 3(cc) of the Act. M/s.Ennore Port Trust not being a 'Company' in terms of Section 3(e) of the Land Acquisition Act, 1894, the provision of Chapter VII of the Land Acquisition Act, 1894 will not apply. This would also go to show that the purpose for which the acquisition was initiated has not changed.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

9. Further Explanation 2 to Section 6 Declaration makes it clear that where the compensation to be awarded for the property is to be paid out of the funds of the corporation owned or controlled by the State, such compensation shall be deemed to be compensation paid out of public revenues. The public purpose as envisaged in Section 4(1) is satisfied. The provisions of Chapter VII of the Act will have no application to companies, which fall under Section 3(cc) of the Act. Therefore, in the instant case, the acquisition is in respect of a Government or a Government owned company as defined under Section 3(cc) of the Act. Having regard to the aforesaid provisions of law and the fact that the acquisition is in respect of a company, which falls under Section 3(cc) of the Act, we find no infirmity in the Declaration passed under Section 6 of the Act and the order passed by the learned single Judge as well.

10. The original purpose itself is for providing staff quarters of Madras Port Trust, a Government owned enterprise and it continues to be for the same purpose to provide staff quarters to Ennore Port Trust after the Government carved out Ennore Port Trust out of Madras Port Trust. Therefore, the contention that Ennore Port Trust is a company to which Chapter VII of the Act will apply is rejected. The public purpose remains the same.

11. Finding no merit in the contentions raised by the appellants, these appeals are accordingly dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

GLN/ts

To

1. The Secretary to Government
   Government of Tamil Nadu
   Highways Department
   Fort St. George,
   Chennai 600 009.

2. The Chairman
   Madras Port Trust
   Chennai 600 001.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

3. The District Collector
Thiruvallur District at
Thiruvallur.

4. The Special Tahsildar
(Land Acquisition)
Miscellaneous Schemes
Saidapet, Chennai - 15.

1 cc To Mr.S.Thankasamy, Advocate, SR.7868.
3 cc To Mr.R.S.Jeevarathnam, Advocate, SR.7563.
1 cc To The Government Pleader, SR.7729.

W.A.NOS. 2849 TO 2863 OF 2002

SSV(CO)
RVL 01.03.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/